

FIRST APPEALS No. 3558 to 3650 of 1998
With
CROSS OBJECTIONS NO. 2 to 94 of 1999
With
CIVIL APPLICATIONS NO. 316 to 408 of 1999
With
CIVIL APPLICATION No. 756 of 1999
With
CIVIL APPLICATION NO. 812 of 1999
With
CIVIL APPLICATION NO. 982 of 1999

Hon'ble MR.JUSTICE J.M.PANCHAL
and

=====

4. Whether this case involves a substantial question

5. Whether it is to be circulated to the Civil Judge? No

SPL.LAO OFFICER

FIRST APPEALS NO. 3558 to 3603 of 1998
MR RC JANI for appellants
MR MR RAVAL, A.G.P. for Spl.Land Acquisition Officer
MR AJ PATEL for original claimants.

FIRST APPEALS NO. 3604 to 3650 of 1998

MR RC JANI for appellant

MR HL JANI, A.G.P. for Spl.Land Acquisition Officer

MR AJ PATEL for original claimants.

CIVIL APPLICATIONS NO. 316/99 to 408/99 & 756/99 & 812/99

MR AJ PATEL for the applicant

MR MR RAVAL, A.G.P. for Spl.Land Acquisition Officer

MR RC JANI for acquiring body.

CIVIL APPLICATIONS NO. 982/99

MR RC JANI for applicant- acquiring body

MR MR HL JANI for Spl.Land Acquisition Officer.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 16/02/99

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

All the above-numbered appeals are ordered to be admitted. Mr. A.J.Patel, learned Senior Counsel waives service of notice on behalf of the claimants in each appeal. At the joint request of learned Counsel appearing for the parties, the above-numbered appeals are taken-up for final hearing today.

2. All the above-numbered appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated February 20, 1998 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in Land Reference Cases No.1325/94 to 1334/94, 1365/94 to 1381/94, 1456/94 to 1464/94, 1474/94 to 1484/94, 1667/94 to 1679/94, 1861/94 to 1875/94, 2038/94 to 2045/94, 2194/94 to 2200/94, 2202/94 and 667/96. All the above-referred to Land Reference Cases were consolidated with Land Reference Case No. 2201/94, wherein common evidence was led by the parties.

3. Though the claimants have filed cross-objections, they have not paid court fees and Civil Applications No. 316/99 to 408/99 are filed requesting the Court to pass an appropriate order either to deduct the amount of court fees payable on the cross-objections from the amount payable to the claimants in their respective claims or to direct the acquiring body to make the payment of court

fees on the cross-objections of the claimants and deduct the same from the amount of compensation ultimately found payable to the claimants or direct the acquiring body to deposit at least 75 percent of the amount awarded by the reference Court and permit the claimants to withdraw the same without furnishing any security whatsoever.

4. Civil Applications No. 756/99 and 812/99 are filed by the claimants; whereas Civil Application No. 982/99 is filed by the acquiring body seeking permission of the Court to lead additional evidence at appellate stage. As common questions of fact and law are involved in these proceedings, we propose to dispose of them by this common judgment.

5. The Executive Engineer of Narmada Project for main canal had proposed to the State Government to acquire agricultural lands of village Sanadara, Taluka : Thasara for the purpose of construction of Narmada Main Canal. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Sanadara were likely to be needed for the said public purpose. Accordingly, different notifications under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) were issued, which were published on different dates. The particulars of publication of notifications issued under section 4(1) of the Act are given in Para-1 of the impugned award. The land owners were served with notices and they had filed their objections against proposed acquisition. After considering their objections, the Special Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that the lands which were specified in different notifications issued under section 4(1) of the Act were needed for the public purpose of construction of Narmada Main Canal. Accordingly, different declarations under section 6 of the Act were made which were also published in Official Gazette. Thereafter interested persons were served with notices for determination of compensation. The Land Acquisition Officer by different awards awarded compensation to the claimants at the rate of Rs. 300/- per Are. The claimants were of the opinion that the offer of compensation made by Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring Special Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly, references were made to the District Court, Kheda at Nadiad which were numbered as mentioned in the earlier part of this

judgment. The reference Court on appreciation of evidence has determined market value of the acquired lands on yield basis and held that the claimants are entitled to compensation at the rate of Rs. 1600/- per Are, by the impugned common award which has given rise to present appeals.

6. The learned Counsel for the parties have prayed that detailed reasons be not given while passing this judgment lest the reasons may not affect adversely the interest of the parties concerned. Therefore, we do not propose to pass a detailed order, but would indicate reasons for passing this order in brief. All the parties agree that the conclusions reached by the Reference Court are unsustainable on settled principles of law and determination of compensation on yield basis is contrary to principles of law enunciated by the Supreme Court in *Special Land Acquisition Officer, Davangere v. P. Veerabhadarappa*, AIR 1984 SC 774. On going through the impugned award, we find that determination of compensation is not made on legal, valid, reliable, acceptable and relevant evidence. The award is vitiated by error apparent on the face of the record and it is difficult for this Court to embark upon appreciation of evidence and come to a conclusion or record a finding that the market value determined by the Reference Court is just, fair and reasonable. Moreover, the parties have filed three different applications seeking permission of the Court to lead additional evidence at appellate stage. By filing these applications, the claimants as well as the acquiring body propose to rely upon previous awards of reference Courts and judgment of the High Court in respect of similar lands, to enable the Court to determine market value of the acquired lands. Additional evidence also cannot be taken into consideration by the Court unless it is proved that the previous awards of the Court including judgments of the High Court, were rendered in respect of lands similar to the acquired lands. In Civil Application No. 982/99 filed by the Acquiring Body for permitting it to lead additional evidence, a prayer is also made to remit the matters to the reference Court to enable the parties to lead evidence and Mr. A.J.Patel, learned Counsel for the claimants has stated at the Bar that the matters be remitted to the reference Court with liberty to all the parties to lead evidence afresh. On overall view of the matter, we are satisfied that this is a fit case to remit the matters to the Reference Court for redetermination of compensation after giving opportunity to all the parties to lead evidence in support of their respective cases.

For the foregoing reasons, the appeals filed by the acquiring body i.e. Executive Engineer, Narmada Project, Main Canal, Division No.10, Thasara, Taluka : Nadiad, District : Kheda are accepted. The impugned award dated February 20, 1998 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad is hereby set aside. All the appeals are remitted to the Reference Court for redetermination of compensation in accordance with law. The parties will be entitled to lead evidence in support of their respective cases before the Reference Court and after hearing the parties, appropriate award redetermining compensation shall be passed by the Reference Court. The references shall be decided by the Reference Court as early as possible as well as without avoidable delay and preferably within six months from today.

Civil Applications No. 316/99 to 408/99 are hereby rejected. As these applications claiming different reliefs are rejected, Cross-Objections do not survive and are dismissed for non-prosecution, as court fees are not paid by the original claimants. Civil Applications No. 756/99, 812/99 and 982/99 seeking permission of the Court to lead additional evidence are also dismissed, as the parties are given opportunity to lead evidence in the Reference Court earlier.

The appeals are allowed, with no order as to costs.

(patel)